



MEMORANDUM

To: Mayor and City Councilors

From: Rich Olson, City Manager

Date: August 4, 2015

Re: Consideration – Hold a Public Hearing to gather citizen input regarding adoption of a proposed Business Registration Ordinance

BACKGROUND:

As the City Council is aware, Governor Pat McCrory signed House Bill 1050 into law on May 28, 2014 eliminating the authority of municipalities to levy privilege license taxes effective July 1, 2015. Although the loss of privilege license revenue is a major issue for the City of Elizabeth City (approximately \$280,000 per year), City staff has an additional concern regarding how to keep track of the businesses in our City for zoning and public safety concerns, now that privilege licenses are no longer available to us.

ANALYSIS:

Cities and counties are authorized to license and regulate businesses in their jurisdictions under [G.S. 153A-134](#) (counties) and [G.S. 160A-194](#) (cities), even though the authority to levy a privilege license tax no longer exists. According to guidance we have received from the School of Government (SOG), these statutes might authorize a business registration system and a minimal registration fee that could help a local government keep track of businesses operating in its jurisdiction. Although the SOG believes this is likely the case, they do not know for sure because state courts have not opined on the matter.

With that said, SOG has advised that if a city were to adopt a registration system it would be wise to exempt from that requirement the businesses described in 160A-194(b) and (c) (see attached). While an argument supporting the decision to include these businesses in a registration requirement could be made, we think a conservative approach is best.

Assuming that an annual fee could be charged for this type of regulatory system, that fee should not be viewed as a replacement for lost privilege license tax revenue. Regulatory fees must be tied to the cost of the related regulatory system. A business registration system that does not involve inspections or background checks would be relatively inexpensive. The SOG has offered that

fees above \$20 per business would run the risk of being viewed as unreasonable by a court.

FINANCIAL:

City staff believes a business registration system would be prudent to assist in the management of the City's zoning and public safety responsibilities. Staff recommends that a fee of \$20 per year be considered and that the registration process be effective beginning September 1, 2015 and annually thereafter.

The registration fee would apply to any business, which previously was required to have a privilege license. If this fee was adopted by the City Council, staff would anticipate approximately \$22,000 in revenue annually.

The Finance Committee discussed this matter during their meeting of July 8, 2015. Upon motion made by Councilman Donnelly, seconded by Mayor Peel, the committee unanimously recommended approval by the City Council.

PUBLIC HEARING REQUIREMENT:

The City Council reviewed this matter and called for a Public Hearing to gather citizen input during the Council meeting of July 13, 2015. The Public Hearing has been advertised as required for 7:30 p.m. on August 10, 2015.

STAFF RECOMMENDATION:

AT THE CONCLUSION OF THE PUBLIC HEARING:

By motion, adopt the attached ordinance providing for Business Registration within the City of Elizabeth City with an initial fee in the amount of \$20.00 per year to be effective on September 1, 2015.

RCO/vdw

§ 160A-194. Regulating and licensing businesses, trades, etc.

(a) **(Effective until July 1, 2015)** A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the city may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. Nothing in this section shall impair the city's power to levy privilege license taxes on occupations, businesses, trades, professions, and other activities pursuant to G.S. 160A-211.

(a) **(Effective July 1, 2015)** A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the city may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor.

(b) Nothing in this section shall authorize a city to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State.

(c) Nothing in this section shall authorize a city to regulate and license digital dispatching services for prearranged transportation services for hire. (1971, c. 698, s. 1; 2013-413, s. 12.1(a); 2014-3, s. 12.3(c); 2014-115, s. 17.)

ORDINANCE #2015-08-_____
PROVIDING FOR ANNUAL BUSINESS REGISTRATION
FOR THE CONDUCT OF BUSINESS WITHIN THE CITY OF ELIZABETH CITY

WHEREAS, the City Council finds that NCGS § 160A-194 has been amended by the North Carolina General Assembly to provide that Privilege Registrations previously required by the City of Elizabeth City of local businesses may no longer provide for a tax; and

WHEREAS, the City Council has taken action to repeal Chapter 14 Business Regulations, Article IV Registration Taxes and Privilege Registrations in its entirety; and

WHEREAS, the newly amended statute continues to permit cities and towns to regulate and subject to registration occupations, businesses, trades, professions and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order or convenience; and

WHEREAS, the City Council finds that annual Business Registration would be prudent to assist in the management of the City's zoning and public safety responsibilities; and

WHEREAS, the City Council hereby replaces Chapter 14, Business Regulations, Article IV Registration Taxes and Privilege Registrations by the adoption of the following Business Registration Ordinance:

Section I. ARTICLE IV Business Registration

Sec. 14.89. - Definitions.

When used in this chapter (unless the context requires a different meaning):

Administrator shall be the person designated by the City Manager to operate the Business Registration Program required by this Article.

Agent is an individual acting on behalf of "Person," as defined herein.

Business includes each trade, occupation, profession, business, and franchise subject to registration under this chapter.

City means the City of Elizabeth City.

Person includes any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, limited liability company, company, firm, or other legal entity.

A business is *seasonal* in nature when it is conducted for profit six months out of the year or less.

Sec. 14.90. - Construction of this chapter.

This chapter is enacted for regulation purposes only. In addition, issuance of a registration in accordance with this chapter does not excuse a person from compliance with any other applicable ordinance or statute. This chapter does not prevent the city from requiring registration for additional businesses.

Sec. 14.91 – Requirement for Registration.

Unless exempt as described in Sec. 14.94 of this chapter, each person who conducts a business within this city is subject to this chapter. One conducts a business "within the city" if one maintains a business location within the city; or if, either personally or through agents, one (1) solicits business within the city limits or (2) picks up or delivers goods or services within the city limits.

Sec. 14-92. - Period of registration; due date.

(a) *Annual registrations.* Unless the section of this chapter applicable to a particular business provides otherwise, a registration issued in accordance with this chapter is good for the 12-month period beginning September 1 and ending August 31.

(b) *Registrations for periods shorter than one year.* If the section of this chapter applicable to a particular business so provides, a registration may be issued for a period of one day, one week, or some comparable period of less than a full registration year. A person may not commence to conduct a business within the city until the business registration is obtained and may not continue such a business beyond the period for which the registration is issued.

Sec. 14-93. - Separate businesses.

A separate registration is required for each place of business unless two or more places of business under common ownership are contiguous to each other, communicate directly with and open into each other, and are operated as a unit.

Sec. 14.94. - Exemptions.

The provisions of this chapter shall apply to all businesses within the City of Elizabeth City municipal jurisdiction unless specifically exempted or excluded from registering by this Ordinance, by the laws of North Carolina or by laws of the United States.

Sec. 14-95. – Registration Application.

A person shall apply to the Administrator for each registration required by this chapter before commencing business. The application, which shall be submitted on forms provided by the City of Elizabeth City Administrator, shall contain:

- a. The name of the owner, and if applicable the agent for the business, and a complete statement as to whether the agent is an individual, a partnership, a corporation, or some other entity.
- b. The nature of the business.
- c. The physical location of where the business is conducted.
- d. An address where notices and statements may be mailed to as required by this chapter.
- e. Whether the business is regulated by a state occupational licensing board subject to G.S. Chapter 93B, and if so, the serial number of the state registration the business or the agent for the business currently holds.
- f. Any other information the Administrator determines to be necessary to issue the registration, or otherwise regulate the business appropriately.

The application shall be accompanied by the payment of a registration fee, which is described in Section 14.99. In compliance with state law, this fee shall not exceed the cost to the city of the administrative process of the production and issuance of the registration, or to otherwise monitor the business.

Sec. 14-96. - Reasons for refusal or revocation of a registration.

The Administrator shall refuse to issue a registration or may revoke a registration for either of the following reasons:

- a. The owner or agent misrepresents a fact relevant to his or her qualifications for a registration.
- b. The owner or agent refuses to provide necessary information, as determined by the Administrator in his or her discretion.

Sec. 14-97. - Unqualified agents; right to a conference.

After receipt of the completed application, if the Administrator believes that a reason exists for refusing a registration under Section 14-96 of this chapter, the Administrator shall not issue the registration. At the agent's request, the Administrator shall in accordance with Section 14-106 of this chapter, give the owner or agent a written statement of the reason for refusing the registration. The owner or agent may, within ten days after the day the statement is received, request a conference to discuss the refusal. In the request, the owner or agent shall specify why the application for a registration should not be refused. The Administrator shall arrange the conference within three business days of receiving the request.

If the Administrator refuses to issue a registration, the owner or agent may reapply for a registration at any time thereafter. If the reason for which the application was refused no longer exists, and if no other reason exists for refusing to issue a registration, the Administrator shall issue the registration in compliance with Section 14-98 of this chapter.

Sec. 14-98. - Administrator to issue registration; payment of registration fee a prerequisite.

After receipt of the completed application and payment of the registration fee, if the Administrator believes that no reason exists for refusal of a registration under Section 14-96 of this chapter, the Administrator shall issue the registration.

Sec. 14-99. - Registration Fee.

The fee required of every owner or agent for any business conducted or engaged in within the city as required by this Chapter shall be set forth and made a part of the Schedule of Fees and Charges adopted by the City Council, as amended from time to time. Notwithstanding the foregoing, the fee shall in no case be more than the maximum permitted by North Carolina law for that particular business or enterprise.

Sec. 14-100. - Revocation.

The Administrator may revoke a registration if a reason exists to revoke it as set forth in Section 14-96 of this chapter. Before revoking a registration, the Administrator shall give the person written notice of the grounds for revocation, in accordance with Section 14-106 of this chapter. The person may, within ten days after the day on which notice is mailed, request a conference with the Administrator in writing. The request shall specify the reasons why the registration should not be revoked. The Administrator shall arrange the conference within three business days of receiving the request.

If the person fails to request a conference within ten days after the day on which notice is mailed, the Administrator shall revoke the registration. If the person requests a conference, the Administrator may not revoke the registration until after the conference.

If the Administrator revokes a registration, the person whose registration has been revoked may apply for a new registration at any time thereafter. If the reason for which the registration was revoked no longer exists and if no other reason exists for refusing to issue a registration, the Administrator shall issue the registration in accordance with Section 14-98 of this chapter.

Sec. 14-101. - Form and contents of registration.

A registration shall show the name of the person, and any agent who may act on the person's behalf, the place where the business is conducted (if it is to be conducted at one place), the nature of the business and the period for which the registration is issued. The Administrator shall keep an exact copy of each registration issued.

Sec. 14-102. - Assignments

A registration may be assigned if (l) a business under this chapter and carried on at a

fixed place is sold as a unit to any person, and (2) the purchaser is to continue the same business at the same place. Such a change shall be reported to the Administrator in accordance with Section 14-103 of this chapter. Otherwise, each registration issued under this chapter is a separate registration and is not assignable.

Sec. 14-103. - Changes in the business conducted during the year.

A person or an assignee shall report any change in the information contained in the registration application to the Administrator within ten days after the change occurs. If information shown on the registration itself is affected, the person or assignee shall surrender the registration to the Administrator when reporting the change.

- a. Fee for change. If the change does not result in a separate registration fee, the Administrator shall reissue a registration reflecting the change upon payment of a processing fee of \$5.00.
- b. Change requiring refusal of a registration. If the change creates a reason for revoking the registration under Section 14-96 of this chapter, the Administrator shall refuse to reissue a registration and shall instead begin proceedings to revoke the registration in accordance with Section 14-100 of this chapter.

Sec. 14-104. - Administrator to furnish duplicates.

Upon satisfactory proof that a registration has been lost or destroyed, the Administrator shall furnish a duplicate for a processing fee of \$5.00.

Sec. 14-105. - Record of conferences.

The Administrator shall maintain for three years a record of each conference held in accordance with this chapter. The record shall contain the agent's and person's name, the date of the conference, and a brief statement of the issues discussed and the result reached. After three years, the Administrator may dispose of the record in accordance with G.S. 121-5.

Sec. 14-106. - Providing notice to an agent or person.

Whenever this chapter requires the Administrator to give a written statement or notice to an agent or a person, the Administrator may do so in one of three ways:

- a. By personally delivering the statement or notice to the agent or person;
- b. By mailing the statement or notice by First Class Mail to the address on the application; or
- c. By causing the statement or notice to be served on the agent or person in accordance with the procedures for service of process under Rule 4, North Carolina Rules of Civil Procedure.

Sec. 14-107. - Duty to determine whether registration is required.

Each person or his/her designated agent has the duty to determine whether the business he or she conducts is required to be registered under this chapter, and if so, whether that registration has been obtained.

Sec. 14-108. - Administrator to investigate.

If the Administrator has reason to believe that a person is conducting a business in the city in violation of this chapter, the Administrator shall conduct an investigation to determine the status of the business.

Sec. 14-109. -Duty to permit inspection.

Each person who conducts a business, as defined in Sec. 14-91, in the city shall permit the Administrator to inspect the business premises during normal business hours to determine the nature of the business conducted there.

Sec. 14-110. - Duty to post registration.

A business shall post the registration or registrations conspicuously in the place of business registered. If the person has a regular place of business, the registration must be kept where it may be inspected at all times by the proper city officials.

Sec. 14-111. -Enforcement of ordinance.

- a. *Criminal remedies.* Conducting business within this city without a valid registration issued in accordance with this chapter, or without posting a registration in compliance with Section 14-110 of this chapter is a misdemeanor, punishable as provided in G.S. §14-4. Each day that a person conducts business in violation of this chapter is a separate offense.
- b. *Equitable remedies.* In addition to the criminal remedies set forth in subsection (a) of this section and in compliance with G.S. 160A-175(d), the city may seek an injunction against any person who conducts a business in violation of this chapter.

Sec. 14-112. Appeal

Any agent/person refused or denied a registration under this Ordinance may appeal to the City Manager for review of such refusal or denial. Such appeal shall be in writing, and shall be delivered to the City Clerk within 30 days after notice of such refusal or denial has been sent or otherwise delivered to the agent/person.

SECTION II. EFFECTIVE DATE: This Ordinance shall take effect on September 1, 2015.

SECTION III. INITIAL FEE: The initial annual and seasonal Business Registration

fee shall be in the amount of \$20.00.

SECTION IV. CODIFICATION. The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

SECTION V. SEVERABILITY CLAUSE. If any section, or part of provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION VI. All ordinances and sections of the Elizabeth City Code, and parts thereof, inconsistent herewith be and the same hereby are repealed to the extent of such inconsistencies.

READ, CONSIDERED, AND ADOPTED at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the _____ day of August, 2015.

Joseph W. Peel
Mayor

Attest:

Vivian D. White, CMC/NCCMC
City Clerk